



## Supreme Court of Georgia

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## SUMMARIES OF OPINIONS

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### **JACKSON V. THE STATE (S16G0888)**

A man currently serving a 30-year sentence for failing to register as a sex offender – with the first six years of his sentence behind bars – has had his conviction and sentence reversed under a decision today by the Supreme Court of Georgia.

In a unanimous opinion, written by **Justice Robert Benham**, the high court finds that the indictment was insufficient and defective because it failed to inform him of the “essential elements” of the crime with which he was being charged.

To withstand a legal challenge, “an indictment must: (1) recite the language of the statute that sets out all the elements of the offense charged, or (2) allege the facts necessary to establish violation of a criminal statute,” the opinion says. “In this case, however, neither of these methods for creating a legally sufficient indictment was followed.”

According to the facts of the case, in June 2004, Prentiss Ashon Jackson pleaded guilty to one count of Statutory Rape. Under Georgia Code § 42-1-12, as a convicted sex offender, Jackson was required to register with the sexual offender registry, which he did, listing an address in **Houston County** where he lived in Warner Robins. Jackson knew that under state law, if he planned to move from that address, he had to register his new address within 72 hours prior to any change. Under subsection (f) (5) of § 42-1-12, if one moves to another county, the law requires him to register not only within the allotted time with the sheriff where he last registered but also with the sheriff in the county where he is moving.

In June 2011, Houston County officers were unable to contact Jackson at his Warner Robins address. They subsequently learned he had moved to Macon in Bibb County and was living with his girlfriend. Jackson had not registered the new address and was arrested in January

2012. At a preliminary hearing, he said he had moved to Macon because his home in Warner Robins had no electricity or water, according to briefs filed in the case.

In the indictment, a Houston County grand jury charged Jackson with “failure to register as a sex offender,” stating in the indictment that Jackson “did fail to register his change of address with the Houston County Sheriff’s Office within 72 hours of the change as required under Official Code of Georgia Annotated § 42-1-12.” During trial, Jackson’s defense attorney made an oral motion asking the court to direct a verdict in his favor, arguing the indictment was defective because it failed to allege that Jackson was a convicted sex offender and that he was required to register under the statute. The trial judge denied his motion. In June 2012, the jury returned a verdict of guilty of failing to register as a sex offender, and Jackson was sentenced to 30 years, to serve six in prison without the possibility of parole and the remaining 24 years on probation. Jackson appealed to the Court of Appeals, which concluded that the indictment was not “fatally defective” because it charged Jackson with violating a specific penal statute and incorporated the terms of the Code section “Because the evidence supported Jackson’s conviction, the trial court properly denied his motion for a directed verdict,” the appellate court ruled. Jackson then appealed to the state Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in finding that Jackson’s indictment was not defective.

In today’s opinion, the high court finds the Court of Appeals erred and has reversed its judgment.

The problem with the Court of Appeals’ reasoning “is that the indictment referenced the entire multi-part, 14-page Code section, which includes numerous requirements with which a convicted sexual offender must comply,” the opinion says. “The indictment merely asserted that appellant [i.e. Jackson] failed to register a change of address with the Houston County sheriff’s office within 72 hours of that change of address as required by § 42-1-12. But even subsection (f) (5), which sets out the steps that must be followed to update a sexual offender’s registration, contains multiple requirements.”

In its 2010 opinion in *Henderson v. Hames*, the Georgia Supreme Court restated the longstanding principle that, “An indictment is void to the extent that it fails to allege all the essential elements of the crime or crimes charged.” “That principle is founded upon the constitutional guaranty of due process.”

As authority for its assertion that Jackson’s indictment was not deficient, the State relied on the Court of Appeals’ 2008 opinion in *Shabazz v. State* and its 1990 opinion in *State v. Howell*, which stated that as long as an indictment charges that the accused’s acts violated a specific penal statute, it will withstand a challenge that it is defective “despite the omission of an essential element of the charged offense.”

However, today’s opinion says that withstanding such a challenge “requires more than simply alleging the accused violated a certain statute. Accordingly, *Howell* and *Shabazz* are overruled, along with later opinions relying on these two cases, to the extent they hold that an indictment alleging merely that the accused’s acts were in violation of a specified criminal Code section is not defective.”

“Further, such an indictment would not provide the accused with due process of law in that it would not notify the accused of what factual allegations he must defend in court,” the opinion says. “Likewise, it would not allege sufficient facts from which a trial jury could

determine guilt if those facts are shown at trial.” Here, the indictment states that Jackson’s offense was, “failure to register as a sex offender.” But Jackson did not fail to register as required by § 42-1-12; he failed to *update* his registration with his change of address and follow the requirements to do so. “In other words, the indictment does not inform the accused of what alleged action or inaction would constitute a violation of even subsection (f) (5) of the Code section, which subsection was not even referenced in the indictment.”

In conclusion, the indictment “did not recite a sufficient portion of the statute to set out all the elements of the offense for which he was tried and convicted,” the opinion says. “Likewise, the indictment did not allege all the facts necessary to establish a violation of subsection (f) (5) of § 42-1-12.”

“Only if additional factual allegations had been asserted in the indictment would it be clear what acts or omissions the grand jury had found probable cause to believe the appellant had committed, and what acts or omissions the trial jury would be required to find, beyond a reasonable doubt, that appellant had committed in order to find him guilty as charged.”

**Attorney for Appellant (Jackson):** Russell Walker

**Attorneys for Appellee (State):** George Hartwig, III, District Attorney, Marie Banks, Asst. D.A.

#### **ABRAMYAN ET AL. V. STATE OF GEORGIA ET AL. (S17A0004)**

The Supreme Court of Georgia has affirmed the **Fulton County** court’s dismissal of a lawsuit filed by Atlanta taxicab drivers against the State government and upheld a new Georgia statute that regulates – and permits – ride-share services such as Uber and Lyft.

In today’s decision, **Justice Carol Hunstein** writes for a unanimous court that contrary to the taxicab drivers’ claim, they do not have a constitutionally protected “exclusive right to provide rides originating in the city limits which charged fares based on time and mileage.”

The case stems from House Bill 225, which the Georgia Legislature passed in 2015, stating that the purpose was “to provide uniform administration and parity among ride-share network services, transportation referral services, and transportation referral service providers, including taxi services that operate in this state for the safety and protection of the public.” The new legislation provided for the regulation of all transportation for hire and included the regulation of cabs. It also created new provisions authorizing and regulating ride-share networks, such as Uber and Lyft. At issue in this case are the medallions Atlanta taxicab drivers must purchase from the City of Atlanta to operate “vehicles for hire” within the city limits. Georgia Code § 36-60-25, as it previously existed, permitted counties and cities to regulate taxicabs and “vehicles for hire.” Under local ordinances, the City has capped the number of medallions at 1,600 and cab drivers must spend as much as \$6,000 to purchase one. Owners of the medallions – known as Certificates of Public Necessity and Convenience – may sell them, give them as gifts, or use them to acquire stock or even as collateral to secure a loan. The medallions allow the City to control the number of cabs in operation. But with House Bill 225, the cab drivers complained that ride-share companies such as Uber and Lyft could operate as many vehicles as they wish. They argued the medallions gave them the “exclusive right” to operate “vehicles for hire” and that the new state law dilutes the value of their medallions. On July 1, 2015, Dmitriy Abramyan and four other cab drivers sued the State and the Georgia Department of Public Safety, claiming that the taxi medallions are a “protected property interest” and that the

enactment of House Bill 225 constituted an unconstitutional “taking” of their property, requiring that the State compensate them for their loss. The State argued that the medallions are not property that is protected by the Georgia Constitution. The trial court ruled in the State’s favor and dismissed the drivers’ lawsuit, concluding that the statute was a valid exercise of legislative authority; that it did not impair the use or necessity of the medallions; and that although it may have diminished the value of the medallion, the taxicab drivers were not entitled to an “unalterable monopoly” regarding vehicles for hire in the City of Atlanta. The taxicab drivers then appealed to the state Supreme Court.

“The trial court’s conclusions are sound,” today’s opinion says.

“As an initial matter, ‘The state has the authority under its police powers to enact reasonable laws regulating the use and operation of motor vehicles upon the public highways.’ In so doing, ‘private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid,’” the opinion says, quoting both a 1993 opinion and the Georgia Constitution.

“Though it may be true that an occupational or business license – once secured – can become a protected property right, there is no argument here that the Act *deprives* Appellants [i.e. taxicab drivers] of their right to engage in the taxicab business; indeed, a [medallion] is still necessary to operate a taxicab in the City of Atlanta.”

The opinion points out that the limit of 1,600 medallions was set more than 20 years ago, and that the attorneys for the taxicab drivers have pointed to no law that prevents the City of Atlanta or the state legislature from increasing the number of medallions in response to changing variables, such as city boundaries and consumer passenger complaints.

Furthermore, as this Court stated in 1887 in *Menken v. City of Atlanta*, “Surely the damage clause in our constitution was not intended to make the State or the legislature an insurer against all shrinkage of values that might result from the passage of laws intended for the public good.”

“Accordingly, because Appellants have failed to identify the deprivation of or damage to a protected property interest, their taking and inverse condemnation claims fail as a matter of law, and they were properly dismissed.”

**Attorneys for Appellants (Abramyan):** William Pannell, Keith Fryer

**Attorneys for Appellees (State):** Samuel Olens, Attorney General, W. Wright Banks, Jr., Dep. A.G., Robin Leigh, Sr. Asst. A.G., Brooke Heinz, Asst. A.G.

### **RICKS V. THE STATE (S17A0465)**

A young man facing a death penalty trial has won his claim that the manner of creating jury lists in **Fulton County** violates the Georgia Supreme Court’s Jury Composition Rule.

Under today’s unanimous opinion, written by **Justice David Nahmias**, the Supreme Court has reversed two Fulton County court orders that denied Otis Ricks’ pre-trial motion asking the court to declare Fulton County’s method of selecting jurors to be in violation of the high court’s Jury Composition Rule.

With today’s opinion, “we conclude that the trial court erred in denying Ricks’s motion to declare Fulton County’s method of creating its jury lists to be in violation of the Jury Composition Rule and by not ensuring that the Rule is followed in Ricks’s case.”

Otis Ricks, Jr. is one of four co-defendants charged in the August 2012 murder of 53-year-old Vanessa Elaine Thrasher during an alleged armed robbery of the restaurant she owned, OT Lounge and Soul Food Grill in northwest Atlanta, according to briefs filed in the case. She was shot seven times. Ricks, 23 at the time, was one of the first suspects arrested. In December 2012, Fulton County District Attorney Paul Howard, Jr. filed a Notice of Intent to Seek the Death Penalty against Ricks. His attorney subsequently filed a motion challenging the composition of Fulton County's jury lists.

In 2012, Georgia Code §15-12-40.1 and the Georgia Supreme Court's Jury Composition Rule established statewide requirements for the creation of county master jury lists. Prior to the Jury Composition Reform Act of 2011, Georgia's 159 counties controlled their own jury lists. The 2011 Act, which was the product of a seven-year effort led by former Chief Justice Hugh Thompson, was designed to replace the jury composition system with a consistent methodology for producing updated lists of eligible jurors.

Under the new rules, the Council of Superior Court Clerks provides Fulton County with a list of eligible jurors each year on July 1. The Jury Composition Rule requires a county master jury list to be at least 85 percent inclusive of the number of a county's adult population. The goal is to ensure that jurors are chosen in a manner that does not deliberately or systematically exclude distinct groups from serving as jurors. Prosecutors claim that Fulton's list is consistently above the 85 percent threshold.

In October 2013, the trial judge held a hearing where Ricks and five other defendants facing the death penalty in Fulton County jointly challenged the use of the 2013 jury list as improperly altered by the county's management vendor, Courthouse Technologies. The judge held a second hearing in June 2015. In two orders, the judge denied the motion. The judge pointed out how large, fluid, diverse and mobile Fulton County's population was, concluding that the county's "jury management procedures account for that reality by including in the management process flagging undeliverable summons[es], duplicate listings, merging records and correlating annual master lists with historical legacy data files." The judge acknowledged that Ricks' attorney "has pointed out anomalies in the data and a lack of transparency in the vendor's coding scheme." But she concluded, "There has not been a showing of either a constitutional violation or a violation of the Jury Composition Rule." Ricks then appealed to the state Supreme Court, which directed the parties to answer whether the trial court erred by denying Ricks' claim that the list from which Fulton County jurors are summoned is produced in a manner that violates the Jury Composition Rule.

In today's 43-page opinion, the Court says, "we conclude that the answer to this question is yes, and we therefore reverse the trial court's rulings to the contrary and remand the case with direction that the court ensure that Ricks' trial jury is selected in a manner that complies with the Jury Composition Rule."

The county's first clear violation of the Jury Composition Rule, the opinion says, is in allowing its vendor to add more than 1,000 names to the county master jury lists provided by the Council of Superior Court Clerks in both 2013 and 2014. In addition, the County improperly deleted "tens of thousands of names" from that list. The Rule specifically states that, "Local clerks and jury commissioners shall not add or delete names from the county master jury list..."

In remanding the case, the state Supreme Court has ordered the trial court “to ensure that the prospective jurors for Ricks’ trial are drawn from a list that is produced and managed in a manner that complies with Georgia Code §15-12-40.1 and with the Jury Composition Rule.”

“In particular, the trial court is directed to ensure the following: that Fulton County and its officials and vendors do not add names to the annual county master jury list provided by the Council of Superior Court Clerks; that names are not deleted from or inactivated on the county master jury list based on those names being regarded by the county as duplicates; that names are not permanently inactivated on the Council’s most recent county master jury list for any reason that has not become known to the county since it last submitted its annual county exception list to the Council; and that names are temporarily inactivated on the county master jury list only for the reasons set forth in Georgia Code §15-12-1.1 or for other valid reasons for which the Rule has not given the Council responsibility, such as jurors’ recent service and non-statutory personal reasons justifying an individual juror’s temporary excusal or deferral.”

**Attorneys for Appellant (Ricks):** Brad Gardner, Emily Gilbert

**Attorneys for Appellee (State):** Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Kevin Armstrong, Sr. Asst. D.A.

### **MAJOR V. THE STATE (S17A0086)**

The Georgia Supreme Court has upheld as constitutional the 2014 version of Georgia’s Terroristic Threats statute that has been challenged by a **Hall County** high school student who has been criminally charged with posting terroristic threats on Facebook.

In September 2014, Devon Major, a student at Lanier Career Academy (LCA), a charter high school, posted a Facebook message saying that, “LCA ain a school stop coming here all yall ain gonna graduate early why cuz there to many yall f---ers to even get on a computer I swear and there so much drama here now Lord, please save me before o get the chopper out and make Columbine look childish.” A school resource officer saw the post and informed the principal and law enforcement. When officers contacted Major, he admitted posting the statement. He was arrested and charged with threatening to commit a crime of violence against another “in reckless disregard of causing such terror” in violation of the former version of Georgia Code § 16-11-37 that was in effect in 2014. Specifically, the statute said that a person commits the offense of a terroristic threat “when he or she threatens to commit any crime of violence, to release any hazardous substance...or to burn or damage property with the purpose of terrorizing another or of causing the evacuation of a building, place of assembly, or facility of public transportation or otherwise causing serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience.” Through his attorney, Major filed a motion challenging his indictment, arguing that the statute under which he was charged is unconstitutional because it is vague and overbroad in violation of his First Amendment right to free speech and Fourteenth Amendment right to due process. The trial court denied his motion, and he asked to appeal to the Georgia Supreme Court. The high court granted his request to appeal and specifically asked the parties to address the question of whether the statute under which he was being charged, former Georgia Code § 16-11-37 (a), was unconstitutionally void because it was vague and overbroad.

In his pre-trial appeal, Major argues that the statute punishes protected speech by focusing on the state of mind of the person receiving the threat (i.e. the listener) rather than the

state of mind of the speaker, and because recklessness does not require a showing of specific intent and therefore does not meet the definition of a “true threat.”

“We disagree,” **Justice Carol Hunstein** writes for a unanimous court. “It is well established that recklessness requires a person to act with ‘conscious disregard for the safety of others.’”

“Therefore, contrary to Major’s assertions, recklessness clearly requires an analysis of the accused’s state of mind at the time of the crime alleged,” today’s state Supreme Court opinion says.

This Court also rejects Major’s argument that recklessly communicating a threat of violence does not meet the definition of a “true threat.” “The United States Supreme Court has defined a true threat to include ‘those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals,’” the opinion says. “However, ‘The speaker need not actually intend to carry out the threat.’”

“Because former § 16-11-37 (a) requires that a person communicate a threat of violence in a purposeful or reckless manner, both of which are true threats and not protected speech, it does not violate the First Amendment’s right to free speech,” today’s opinion says.

Major further contends that the statute is “void for vagueness” because it lacks a clear and discernable definition of what constitutes a threat.

“Once again, Major alleges that the statute focuses on the listener’s reaction to the communicated threatening language and not the intent of the speaker, muddying the lines of what is, and what is not, constitutionally protected speech,” the opinion says. The plain language of the statute “prohibits a person from threatening, in a reckless manner, to commit any crime of violence. A person of ordinary intelligence can clearly understand the meaning of threatening to commit any crime of violence.” Therefore, “we affirm the trial court’s decision upholding the constitutionality of former § 16-11-37 (a) against a vagueness challenge.”

Finally, Major contends the statute is unconstitutional as applied to him, arguing that the phrase, “Lord, please save me,” in his post was therapeutic or religious in nature and did not reflect an intent to commit a violent act.

“However, whether an accused acted with the required criminal intent is a question of fact reserved for the jury, not this Court,” today’s opinion says. “Based on the evidence in the record before us, we find that the statute has not been unconstitutionally applied to Major.”

**Attorney for Appellant (Major):** John Rick of the Hall County Public Defender’s Office

**Attorneys for Appellees (State):** Lee Darragh, District Attorney of the Northeastern Circuit, Alicia Taylor, Asst. D.A., Christopher Carr, Attorney General, Patricia Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.

### **RABON V. THE STATE (S17A0644)**

A young man convicted of the 2008 murder of one woman and the brutal rape of another will remain in prison under an opinion today by the Georgia Supreme Court.

In this high-profile **Rockdale County** case, the high court has unanimously upheld the convictions and life prison sentences given to Travis Santell Rabon for the murder of Keira Avant and the rape of her friend. Rabon was about 21 years old at the time.

Today's opinion, written by **Justice Carol Hunstein**, provides a detailed account of the violent crimes. On Dec. 29, 2008, officers with the Rockdale County Sheriff's Office responded to a disturbance call at the Lake Saint James Apartment Complex. Upon their arrival, witnesses directed them to Rabon's apartment. "After several knocks, Rabon opened the door holding a mop," the opinion says. "The officers immediately noticed blood on the wall, which Rabon attributed to being bitten by his dog."

Investigators learned that earlier that day, at about 8:30 a.m., Avant had received a phone call from Rabon offering to lend her money so that she could obtain her bartender's license. "After Avant accepted the loan offer, Rabon requested she travel to his apartment to pick up the money. Later in the day, Avant went inside Rabon's apartment alone while her three friends waited in the parking lot. After an extended period of time, the women became concerned, so one of them went to check on Avant. After she knocked on the door, Rabon yanked the woman inside, held a gun to her head, told her she was going to watch him have sex with Avant, and demanded she remove her clothing. The woman pleaded with Rabon not to kill her and pretended to take off her clothes, then ran to the door. Rabon pulled her back and the pair began to struggle, during which Rabon hit her in the head multiple times with a gun, bit her, and choked her to the point of unconsciousness."

"Rabon then dragged the victim to the bathroom, forced her to have sex with him and ordered her to perform oral sex on him, which she did out of fear for her life. After the rape, Rabon dragged the second victim into the master bedroom, where an unresponsive Avant was on the floor with a cord tied around her neck. Her top was pulled up and her pants and boots pulled down. As the second victim screamed and begged for her life, Rabon made her lie on top of Avant so he could have vaginal sex with her and anal sex with Avant interchangeably."

Shortly after law enforcement officers entered Rabon's apartment, "an extremely upset young woman appeared from the bathroom yelling for help. Her head was wrapped in a blood soaked cloth and she was clothed only in a damp, bloodied bra and sweat pants."

"Once inside the apartment, law enforcement saw blood on the walls and floor, as well as blood droplets leading to the back of the apartment where they located an unconscious Keira Avant on the floor of the bedroom with a cord around her neck. Her clothing had been pulled above her waist and her underwear had been removed. Law enforcement recovered numerous items from the residence including a handgun and a barbell. DNA testing later revealed the presence of the surviving victim's blood on both items."

"EMS immediately treated the surviving victim for swelling and numerous contusions and lacerations to her head and throat. She told the paramedics that she had been pistol whipped in the head, strangled and raped. She was later life-flighted to Grady Hospital in Atlanta where a sexual assault examination revealed redness on her vaginal wall, which was consistent with a sexual assault. Swabbings were also taken from the surviving victim's vagina and anus; Rabon's DNA was found on the latter."

"Meanwhile, Avant was taken to Rockdale County Hospital where she was determined to be brain dead. After Avant's treating physician concluded that she would not recover from her injuries, her family removed her from life support, and Avant subsequently died on Dec. 31, 2008. An autopsy confirmed that Avant's cause of death was a lack of blood and oxygen to the brain due to strangulation."

“Rabon spoke with police and gave five different versions of what had occurred, eventually implicating himself in the crimes. The State also presented similar transaction evidence at trial from Rabon’s former girlfriend, wherein she testified that Rabon had hit and choked her and raped her in the past, an allegation he admitted in a handwritten letter, which was also introduced into evidence at trial.”

Following a January 2012 trial, a jury found Rabon guilty of a number of crimes, including malice murder, rape, kidnapping, aggravated sodomy, aggravated assault and aggravated battery. He remains in prison under three life sentences.

In his appeal to this Court, Rabon’s attorney argued the trial court erred in denying his request for indigent status and public funds to hire experts and investigators in preparation for trial.

In today’s opinion, the high court has rejected them all. In addition, “Though not raised by Rabon, we find that there was sufficient evidence to enable a rational trier of fact to conclude beyond a reasonable doubt that Rabon was guilty of the crimes for which he was convicted,” the opinion says. “Judgment affirmed. All the Justices concur.”

**Attorney for Appellant (Rabon):** Melinda Johnson

**Attorneys for Appellee (State):** Richard Read, District Attorney, Roberta Earnhardt, Sr. Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Jason Rea, Asst. A.G.

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**IN OTHER CASES**, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

- \* Mark Adkins (Chatham) **ADKINS V. THE STATE (S17A0111)**
- \* Martin Napoleon Holmes (Columbia Co.) **HOLMES V. THE STATE (S17A0077)**
- \* Nicholas Johnson (Richmond Co.) **JOHNSON V. THE STATE (S17A0673)**
- \* Inee Lyman (Fulton Co.) **LYMAN V. THE STATE (S17A0209)**
- \* Anthony Torrence Veal (Putnam Co.) **VEAL V. THE STATE (S17A0255)**

**IN DISCIPLINARY MATTERS**, the Georgia Supreme Court has **disbarred** the following attorney:

- \* Everett H. Mechem **IN THE MATTER OF: EVERETT H. MECHEM (S17Y1190)**

The Court has ordered the **six-month suspension** of attorney:

- \* Michael Robert Johnson **IN THE MATTER OF: MICHAEL ROBERT JOHNSON (S17Y0686)**

The Court has ordered the **public reprimand** of attorney:

\* Thomas E. Stewart

**IN THE MATTER OF: THOMAS E. STEWART**  
**(S17Y0422)**